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Security Interests in Crops--Part Two

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SECURITY INTERESTS IN CROPS

Part Two*

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Rights as Between Land Mortgagee and Those Claiming Under the Land Mortgagor

Perhaps nowhere is the task of defining the exact nature of crops more difficult and troublesome than in the determination of conflicting claims to crops between mortgagees of the land on which the crops are grown and other adverse claimants.[107] The crops, in one sense, are a part of the realty, and it would seem that the lien of a real estate mortgage should extend to them as such. In another sense, they represent the "rents, issues, and profits" of the soil, and could be considered as comprehended within a land mortgage only where there is a clause expressly hypothecating rents and profits. Finally, crops when severed are said to become personalty, as to which the lien of the mortgage does not extend. In the typical mortgage of agricultural land, the term will cover several growing seasons, during which the crops will pass through each of these phases. Resolution of the conflicting claims to the crops has involved the California courts in considerable manipulation of these various aspects of the nature of a crop.

There are a variety of possible factual situations which may be presented. First, the mortgage may or may not attempt to hypothecate the rents and profits of the land as security for the debt. The mortgagee may or may not be in possession of the land. The claimants to the crop may be the mortgagee and the mortgagor, or they may be claimants deriving rights from either of these parties. Finally, the rights of the parties will vary depending on the status of the mortgage and the debt, from execution through default, filing of the complaint in foreclosure, rendering of the decree, sale, and finally issuance of the sheriff's deed.

In order to fully appreciate the development of the law in this area, an historical perspective is essential.[108] At risk of oversimplification, the fol-

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107 See generally 14 CAL. JUR. 2d *Crops* § 3 (1954).

108 The brief statements following are intended only as a general outline of the historical derivation of the mortgage. See generally GLENN, MORTGAGES, c. I (1943). California cases discussing the historical aspects include Spect v. Spect, 88 Cal. 437, 26 Pac. 203 (1891); Dutton v. Warschauer, 21 Cal. 609 (1863); McMillan v. Richards, 9 Cal. 365 (1858).

lowing generalizations seem best to describe the background against which the current struggle of the law is made. Basically, the mortgage is one of the many devices which have been employed to provide security for a debt. The concept is an ancient one, and has always been part of the continuing struggle between the debtor and the creditor classes. There were, in the ancient law, two types of pledges which could be made of land—the "vit"-gage, or "live" pledge, and the "mort"-gage, or dead pledge. Both represented hypothecations of land as security for a debt. The difference lay in that the "vit" gage contemplated application of the rents (in the property sense) of the land to satisfaction of the debt, whereas the "mort" gage did not. This right to apply the rents of the land to satisfaction of the debt is closely related to the problem of possession of the land. At the common law in England, a mortgage was regarded as a conditional conveyance which becomes absolute on condition broken. The right of possession was in the mortgagee unless expressly reserved to the mortgagor. This theory of the mortgage has been known as the "title" theory. In Equity, however, and presently in the majority of American jurisdictions, the "lien" theory is used, under which the mortgage is regarded as being merely a device securing to the creditor the property hypothecated only in the event that there is a default under the debt, and then only for the limited purpose of satisfying that debt. Whereas mere default is sufficient under the title theory to make the conveyance to the mortgagee absolute, under the lien theory the only effect of a default on the debt is to give the mortgagee the right to bring action to enforce his claim against the property in satisfaction of the debt. The debtor may redeem from the default at any time before a court finally decrees sale of the land in satisfaction of the debt.

The California courts have adopted the lien theory of the mortgage.[109] The mortgagee has no right to possession of the land, but is limited in his rights to foreclosure and sale of the mortgaged property.[110] It is possible, however, without additional consideration, for the mortgagor to give permission to the mortgagee to take possession of the property,[111] but the right of possession confers no additional interest in the property, serving only to provide another form of security interest.[112]

Determination of the conflicting rights to crops, as these rights may be affected by a crop mortgage of the land on which they are grown, requires consideration of the various statuses which the crops may have. The questions which must be resolved are:

(1) To what extent does a real estate mortgage include a right to crops, as such?

[109] Mack v. Wetzlar, 39 Cal. 247 (1870); Fogarty v. Sawyer, 17 Cal. 589 (1861).

[110] The point was settled long ago in cases such as Dutton v. Warschauer, 21 Cal. 609 (1863); Fogarty v. Sawyer, 17 Cal. 589 (1861); Guy v. Ide, 6 Cal. 99 (1856).

[111] CAL. CIV. CODE § 2927.

[112] See cases cited in note 110 *supra*.

(2) To what extent does a real estate mortgage give a right to crops as rents of the land?
(3) To what extent does the real estate mortgage give a right to crops as part of the land?

Right to Crops As Such

The first problem is easy of resolution. For many years the California courts have consistently held that a mortgage of real estate confers no rights in the crops as such.[113] When the real estate mortgagee is claiming adversely to a purchaser or encumbrancer of a crop, the fact that the real estate mortgage is not executed and recorded in accordance with the requirements of section 2955 of the California Civil Code invalidates the claim of the real estate mortgagee. But the defect goes deeper than mere failure to comply with the formal requirements for execution of a crop mortgage. In *Modesto Bank v. Owens*[114] it was held that even though a crop mortgagee had notice of a prior real estate mortgage, the crop mortgagee had a prior claim to the crops as such, since the real estate mortgage does not extend to the crops as such, and no amount of notice can make it a crop mortgage.

Despite this strong holding, it would seem that a real estate mortgage which expressly stated that it was also intended to operate as a crop mortgage would be effective as between the parties and those with notice[115] under the principles enunciated in section 2973 of the Civil Code.[116] By the same token, a mortgage executed as a crop mortgage may be effective as a real estate mortgage as between the parties and those with notice.[117] Leaving aside these unusual situations, and assuming the normal real estate mortgage, it is clear that any claim by the mortgagee of the land of a right to the crops must be predicated upon their being something else—either rents of the land, or a part of the realty.

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[113] See generally Shintaffer v. Bank of Italy, 216 Cal. 243, 13 P.2d 668 (1932); Simpson v. Ferguson, 112 Cal. 180, 40 Pac. 104 (1896).

[114] 121 Cal. 223, 53 Pac. 552 (1898).

[115] As against creditors, it would seem that the real estate mortgage would fail as a crop mortgage, even if there were notice of provisions specifically hypothecating the crops as such, unless the instrument were recorded as a chattel mortgage in the manner provided for in section 2957 of the Civil Code. See Cardenas v. Miller, 108 Cal. 250, 39 Pac. 783 (1895), disapproving Fette v. Lane, 4 Cal. Unrep. 813, 37 Pac. 914 (1894) to extent it contradicts. Summerville v. Kelliher, 144 Cal. 155, 77 Pac. 889 (1904); Ruggles v. Cannedy, 127 Cal. 290, 53 Pac. 911 (1899).

[116] Note that this reference is to a real estate mortgage which additionally purports to hypothecate the crops as such, not as rents and profits of the land. See Cardenas v. Miller, 108 Cal. 250, 39 Pac. 783 (1895); Williams v. Belling, 76 Cal. App. 610, 245 Pac. 455 (1926). *But see* discussion of Montgomery v. Merrill, 65 Cal. 432, 4 Pac. 414 (1884) in Simpson v. Ferguson, 112 Cal. 180, 40 Pac. 104 (1896).

[117] Pacific Fruit Exchange v. Duke, 103 Cal. App. 340, 284 Pac. 729 (1930).

Right to Crops As Part of Realty

The right of the land mortgagee to crops as part of the realty has also been fairly well settled by the California courts, in a line of cases dating from *Simpson v. Ferguson,*[118] which have consistently held that even though a mortgage gives a lien on everything which would pass under a grant of the realty (which would clearly include the crops), that it gives the mortgagee no right to crops grown between execution of the mortgage and foreclosure.[119] Even after foreclosure the mortgagee obtains no rights to the crops as part of the realty, although he may obtain a right to them as rents of the land.[120] And, of course, on sale of the land under the decree the title to the growing crops passes not to the mortgagee, but to the purchaser, who is frequently the mortgagee, but does not purchase in that capacity. Once again, then, the right to the crops as part of the realty is an extremely limited one, being of value to the mortgagee only to the extent that the sale price of the land is enhanced by the fact that the crops growing on the land at time of sale will pass to the purchaser.

Any rights in the crops which may accrue to the mortgagee under a normal land mortgage must, then, accrue to him only insofar as the crops represent the rents of the mortgaged land. Consideration of the problems of the right to crops as rents will first require some consideration of the right of a real estate mortgagee to rents in general, after which it is possible to consider the rights to crops specifically.

Right to Rents in General

As noted above, there are historically two types of security devices relating to land: those which contemplate satisfaction of the debt through application of the rents and profits of the land to the debt, and those which do not contemplate such application. Further, a distinction is made between a mortgagee who is in possession, and one who is not.

In California, by the express provisions of the Civil Code[121] a mortgage does not entitle the mortgagee to possession of the property, unless authorized by its express terms; but after execution of the mortgage the mortgagor may agree to such change of possession without a new consid-

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[118] 112 Cal. 180, 40 Pac. 104 (1896).

[119] Cowdery v. London and San Francisco Bank, 139 Cal. 298, 73 Pac. 196 (1903); Gregory v. Clabrough's Executors, 129 Cal. 475, 62 Pac. 72 (1900); Locke v. Klunker, 123 Cal. 231, 55 Pac. 993 (1898); Modesto Bank v. Owens, 121 Cal. 223, 53 Pac. 552 (1898); Bank of Woodland v. Heron, 120 Cal. 614, 52 Pac. 1006 (1898); Casey v. Doherty, 116 Cal. App. 42, 2 P.2d 495 (1931); Binney v. San Dimas Lemon Ass'n, 81 Cal. App. 213, 253 Pac. 346 (1927); Bank of Woodland v. Christie, 6 Cal. Unrep. 545, 62 Pac. 400 (1900); see Becker v. Munkelt, 27 Cal. App. 2d 761, 81 P.2d 1041 (1938).

[120] Simpson v. Ferguson, 112 Cal. 180, 40 Pac. 104 (1896).

[121] CAL. CIV. CODE § 2927.

eration.[122] And, as the etymology of the title of instrument would suggest, the mortgage does not include any right to rents and profits. It is, however, possible for the mortgage to be so worded as to confer a lien upon rents and profits, and a provision to this effect is normally included in every modern instrument, most frequently in the form of an assignment of the rents and profits, giving the mortgagee a right to possession on default.

If the mortgage does not include some provision regarding rents and profits of the land, the right of the mortgagee with respect to those rents and profits is easy of ascertainment. He has none. In *Locke v. Klunker*[123] it was held that even after the mortgagee gained possession through appointment of a receiver he was not entitled to apply the rents and profits of the land to the mortgage debt, inasmuch as the instrument did not purport to make them liable for the debt. To permit the mere fact that the mortgagee had gained possession, through appointment of a receiver on allegations the security was insufficient[124] to create a right to the rents and profits would be to convert a remedial section providing for appointment of receivers into a device for giving the mortgagee something more than that which he bargained for. This the court refused to do.[125] The only problem left open by this decision, a problem as yet apparently unresolved, is the right of the mortgagee in possession to claim the crops growing at the time of the decree which are harvested before sale. There are indications in the opinion that during this brief interval the crops belong to the mortgagee in possession, as part of the realty. No case has been found directly involving this point, however, and since almost every modern instrument includes an assignment of rents and profits, it is doubtful whether the court will ever be called upon to decide it. Further, it is now quite well settled that a mortgagee claiming under an instrument without a rents and profits clause is not entitled to appointment of a receiver on allegations that the land is insufficient to pay the debt,[126] so the question could only properly arise in a case in which the mortgagor has given possession to the mortgagee voluntarily.

Assuming a provision in the instrument subjecting rents and profits to the mortgage lien, there remain significant problems. Until such time

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[122] *Ibid.*

[123] 123 Cal. 231, 55 Pac. 993 (1898); see also Guy v. Ide, 6 Cal. 99 (1856); and see Illinois Trust & Sav. Bank v. Alvord, 99 Cal. 407, 33 Pac. 1132 (1893).

[124] CAL. CODE CIV. PROC. § 564(2).

[125] To same effect see Bank of Woodland v. Heron, 120 Cal. 614, 52 Pac. 1006 (1898). And see Becker v. Munkelt, 27 Cal. App. 2d 761, 81 P.2d 1041 (1938) involving a mortgagee in possession under a deed absolute intended to be a mortgage. See also Mahoney v. Bostwick, 96 Cal. 53, 30 Pac. 1020 (1892).

[126] Locke v. Klunker, 123 Cal. 231, 55 Pac. 993 (1898).

as the mortgagee actually gains possession of the mortgaged land, there is serious doubt whether he can assert any claim to the rents and profits of the land, even though the instrument contains an express provision relating to them,[127] although an occasional case suggests that it may be possible to so word a rents and profits clause as to permit the mortgagee's asserting a right to them even prior to the taking of possession.[128] Normally, however, any attempted absolute assignment of the rents and profits would be construed as merely providing for additional security, and, in fact, the typical rents and profits clause is expressly made conditional upon default and entry.

The first problem of the mortgagee wishing to claim rents and profits under a mortgage subjecting them to the claim of the mortgagee is that of obtaining possession of the land. There are two ways in which this may be done: first, through the voluntary yielding of possession by the mortgagor, which may be effected at any time, without additional consideration;[129] second, through proper judicial action upon default.[130]

The voluntary taking of possession is, of course, not the normal situation, although it is more frequent of occurrence than would at first thought seem likely. The cases are fairly clear to the effect that the mortgagee asserting a right as a mortgagee in possession must have attained that status with the permission of the mortgagor. A forcible entry is of course not sufficient to perfect a claim to rents and profits, and it has been held that where the mortgagee takes possession without the consent of the mortgagor his action in doing so is a trespass, entirely unrelated to the mortgage transaction.[131] Possession may even be found where the mortgagee appoints the mortgagor his agent.[132]

More usual is the entry through the person of a receiver. The California courts have been rather confused at times as to the right to appointment of a receiver,[133] but the law now appears somewhat better settled. It is settled that a mere stipulation in a mortgage to the effect that on default a receiver may be appointed to take rents and profits is not sufficient to give jurisdiction to a court to appoint a receiver, since it is

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127 Gregory v. Clabrough's Executors, 129 Cal. 475, 62 Pac. 72 (1900); Simpson v. Ferguson, 112 Cal. 180, 40 Cal. 104 (1896); *cf.* Freeman v. Campbell, 109 Cal. 360, 42 Pac. 35 (1895). And see Pollack v. Sampsell, 174 F.2d 415 (9th Cir. 1949).

128 See Snyder v. Western Loan & Bldg. Co., 1 Cal. 2d 697, 37 P.2d 86 (1934).

129 CAL. CIV. CODE § 2927.

130 Cameron v. Quong, 175 Cal. 377, 165 Pac. 961 (1917); Freeman v. Campbell, 109 Cal. 360, 42 Pac. 35 (1895); Nelson v. Bowen, 124 Cal. App. 662, 12 P.2d 1083 (1932).

131 Freeman v. Campbell, 109 Cal. 360, 42 Pac. 35 (1895).

132 Snyder v. Western Loan & Bldg. Co., 1 Cal. 2d 697, 37 P.2d 86 (1934).

133 See, *e.g.*, Scott v. Hotchkiss, 115 Cal. 89, 47 Pac. 45 (1896) and Bank of Woodland v. Heron, 120 Cal. 614, 52 Pac. 1006 (1898).

beyond the power of the parties to create jurisdiction in the court where it is otherwise lacking.[134] A long series of older cases also held that a mortgage which included a rents and profits clause did not support a plea for receiver, unless it was possible to justify the appointment under section 564(2) of the California Code of Civil Procedure, providing for such appointment where the security was insufficient to satisfy the debt.[135] However, in *Mines v. Superior Court*[136] it was held that an assignment of rents in a deed of trust was sufficient to empower the court to appoint a receiver even without allegations of insufficiency of the security, under the general authority conferred by section 564(7) providing for appointment of a receiver in all other cases (than those enumerated in other subsections) where they have previously been appointed at equity. While it has been suggested[137] that this case rests on the distinction between deeds of trust and mortgages, it is felt that a more plausible and practical explanation is that the distinction between this and prior cases is that the provision regarding rents and profits was phrased as an absolute right to take possession and that the result would be the same whether the instrument were a deed of trust or a mortgage.

Rights of Mortgagee in Possession to Rents and Profits

Assuming, then, that the mortgagee is able to obtain possession of the mortgaged property, either personally or through a receiver, what are his rights as to the rents and profits of the property? As was stated in *Dutton v. Warschauer*,[138] the mere taking of possession does not expand the mortgagee's interest in the land; however, where possession is taken after condition broken, with the consent of the mortgagor, it will be presumed that the mortgagee is to receive the rents and profits to apply to the debt, unless there is strong evidence to the contrary.[139] Since the possession of the mortgagee is usually obtained under some form of formal authorization, either a court order in the case of the appointment of a receiver, or a written consent from the mortgagor, there is generally no "strong evidence to the contrary." Just as clear as the mortgagee's right to apply the rents

[134] Bank of Woodland v. Stephens, 144 Cal. 659, 79 Pac. 379 (1904); Baker v. Varney, 129 Cal. 564, 62 Pac. 100 (1900); see Scott v. Hotchkiss, 115 Cal. 89, 47 Pac. 45 (1896).

[135] See Title Ins. and Trust Co. v. California Development Co., 164 Cal. 58, 127 Pac. 502 (1912).

[136] 216 Cal. 776, 16 P.2d 732 (1932).

[137] Cormack and Irsfeld, *Application of the Distinction Between Mortgages and Trust Deeds in California*, 26 CALIF. L. REV. 206, 212 (1938).

[138] 21 Cal. 609 (1863).

[139] Husheon v. Husheon, 71 Cal. 407, 12 Pac. 410 (1886); Hidden v. Jordan, 28 Cal. 301 (1865); Nelson v. Bowen, 124 Cal. App. 662, 12 P.2d 1083 (1932); see Simpson v. Ferguson, 112 Cal. 180, 40 Pac. 104 (1896); *cf.* Cowdery v. London and San Francisco Bank, 139 Cal. 298, 73 Pac. 196 (1903).

and profits to the debt, however, is the rule that the mortgagee is a trustee of the rents and profits, and his application of the rents and profits is subject to an accounting to the mortgagor for any excess received over the amount necessary to satisfy the debt.[140] Thus, where the mortgagor has directed a specific application of the excess, the mortgagee in possession has no option but to comply with these instructions.[141]

The rents and profits to which the mortgagee or his receiver are entitled have been fairly well defined by the decisions of the courts over the years, although there remain some troublesome areas. Most commonly, the litigation in this area has been over the rights of receivers to take rents and profits, so the balance of the discussion shall be limited to this particular aspect. To a great extent the rights of the receiver and of the mortgagee personally in possession will be identical, but in those areas in which it is felt that there is some possibility that a special problem is created by the fact that possession is taken through a receiver attention will be drawn to the possible problems.

Generally speaking, the receiver is entitled to collect all rents accruing after his appointment.[142] This right does not extend to rents which became payable to the mortgagor prior to appointment of the receiver, even though the mortgagor had not yet collected them.[143] It appears, however, that there is no apportionment to be made, so that if the receiver is appointed on the day before the rent for the past year falls due, he is entitled to the full amount thereof. That the date of appointment controls the right to receive rents appears settled,[144] but there is language in one case suggesting that where the receiver is appointed but fails to take possession that he has no right to the rents and profits accruing during the time between appointment and actual entry.[145] In this latter case, however, it appears that there was no rents and profits clause in the mortgage, in which event this language is not meaningful in the context of the present inquiry.

It appears that the right to collect rents and profits continues until the time of sale, although there are interesting cases, discussed below, which indicate that the right may be more extensive than this. At any rate, it is clear that rents and profits accruing between the time of appointment, or perhaps possession, and the time of sale of the property may be collected by the receiver to be applied to the debt.

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140 Pierce v. Robinson, 13 Cal. 116 (1859).

141 *Ibid.*

142 Casey v. Doherty, 116 Cal. App. 42, 2 P.2d 495 (1931); Binney v. San Dimas Lemon Ass'n, 81 Cal. App. 213, 253 Pac. 346 (1927).

143 *Ibid.*

144 *Ibid.*

145 Bank of Woodland v. Heron, 120 Cal. 614, 52 Pac. 1006 (1898) (note that there was no rents and profits clause).

Following sale of the mortgaged property, where foreclosure is through judicial proceedings, the California statutes provide for a statutory tenancy in favor of either the mortgagor or his tenants, lasting for one year in the normal situation.[146] During this period the mortgagor, or certain other specified persons,[147] may redeem the property from the foreclosure sale, through complying with certain statutory procedures.[148] Where such a redemption takes place, the sale is to effects, annulled.[149] The balance of this discussion shall assume that no redemption is made, and consider the rights of the purchaser at the sale to claim the rents and profits of the property during the statutory redemption period.

Rights of Purchaser at Foreclosure Sale to Rents and Profits

Certain of the rights and disabilities of the purchaser at foreclosure sale have been clearly outlined in the statutes and the decisions thereunder. Thus, it is clear that the purchaser is not entitled to possession of the property during the redemption period.[150] The purchaser is, however, granted by the statute a right to "the rents of the property sold, or the value of the use and occupation thereof."[151] Again, as in the case of the mortgagee seeking a right to crops, it is only through this provision that the purchaser is able to assert any claim to crops grown during the redemption period.

The right of the purchaser to rents being a statutory one, it is not subject to the normal rules denying apportionment of rent between successive owners of land. In *Clarke v. Cobb*,[152] it was held, and the holding has been consistently followed, that the purchaser is entitled to rents from the time he receives the sheriff's certificate until he receives the deed. The fact that the due dates for rents may not coincide with these dates is immaterial. The only exception to this rule is the unusual situation in which the mortgaged property had been leased before the mortgage was executed, so that what is obtained through the purchase is not a possessory fee, but rather a reversion. In such a case the purchaser has no greater rights than did the mortgagor.[153] Normally, however, any leases are subject

146 CAL. CODE CIV. PROC. § 702. Under section 725(a) of the Code of Civil Procedure the period is three months, where the instrument contained a power of sale, but there was judicial foreclosure with sale for a sum greater than the judgment.

147 CAL. CODE CIV. PROC. § 701.

148 CAL. CODE CIV. PROC. §§ 701–05.

149 But the purchaser is entitled to rents accrued during the period before redemption. Kline v. Chase, 17 Cal. 596 (1861).

150 First held in Guy v. Middleton, 5 Cal. 392 (1855) under § 230 of the Practice Act of 1850. See CAL. CODE CIV. PROC. § 707.

151 CAL. CODE CIV. PROC. § 707.

152 121 Cal. 595, 54 Pac. 74 (1898). The most recent case reaffirming this rule is Silveira v. Ohm, 33 Cal.2d 272, 201 P.2d 387 (1949).

153 *Cf.* Fowler v. Lane Mortgage Co., 58 Cal. App. 66, 207 Pac. 919 (1922).

to the mortgage under which sale is had, and the purchaser's rights are primary. There is language in a few cases suggesting that a lease executed and recorded after the mortgage might nonetheless be superior to it.[154] Whether such cases would apply to the rights of the purchaser is an open question.

The purchaser is entitled to collect the rents of the land from whomever happens to be in possession, be it a tenant of the mortgagor or the mortgagor himself. It has long been settled that where the mortgagor remains in possession, he is a "tenant in possession" within the meaning of the statute[155] and is liable to the purchaser for use and occupation. Where possession of the land is in a tenant of the mortgagor, he is liable to the purchaser for the statutory rents, even though he has prepaid the rent for a term extending into the redemption period.[156] As was said in *Webster v. Cook*,[157] the occupier of premises from the time of the sheriff's sale to execution of the sheriff's deed is prima facie liable to the purchaser for rent. If the tenant in possession pays in advance to the mortgagor it does not relieve him from liability under the statute to pay rent to the purchaser. The only defense against the prima facie liability is to affirmatively allege priority of the lease *and* prepayment of the rent. On the other hand, in *Title Ins. and Trust Co. v. Pfenninghausen*[158] it was held that where the tenant in possession had not been notified of the sale and paid rents *after* the sale to the mortgagor, that he was released from liability to the purchaser. Thus the rule is that prepayment before sale, when there is no way of knowing that it will take place does not exonerate the tenant, but payment after the sale will exonerate, if there has been no notice.

The problem of the purchaser, then, is not so much that of entitlement as of enforcement, and it is in this area that the decisions have been least satisfactory. Although under the pre-Code rules it was possible to have a receiver appointed to collect the rents for the purchaser,[159] it is now the

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[154] Mercantile Trust Co. v. Sunset Road Oil Co., 176 Cal. 461, 168 Pac. 1037 (1917); McDermott v. Burke, 16 Cal. 580 (1860); Calidono Hotel Co. v. Bank of America, 31 Cal. App. 2d 295, 299, 87 P.2d 923, 925 (1939).

[155] Carpenter v. Hamilton, 24 Cal.2d 95, 147 P.2d 563 (1944); Walker v. McCusker, 71 Cal. 594, 12 Pac. 723 (1887) (both under 1872 code). Knight v. Truett, 18 Cal. 113 (1861); Kline v. Chase, 17 Cal. 596 (1861); Harris v. Reynolds, 13 Cal. 514 (1859) (all under the Practice Act § 236).

[156] Peterson v. Jurras, 2 Cal.2d 253, 40 P.2d 257 (1935); Harris v. Foster, 97 Cal. 292, 32 Pac. 246 (1893); Webster v. Cook, 38 Cal. 423 (1869); Hunkelt v. Kumberg, 22 Cal. App. 2d 369, 70 P.2d 997 (1937); *cf.* Fowler v. Lane Mortgage Co., 58 Cal. App. 66, 207 Pac. 919 (1922).

[157] 38 Cal. 423 (1869).

[158] 57 Cal. App. 655, 207 Pac. 927 (1922).

[159] Shores v. Scott River Co., 21 Cal. 135 (1862).

law that a receiver may not be appointed for this purpose.[160] This rule has become so well settled that even the most compelling factual situations have not moved the court to permit appointment. In *West v. Conant*,[161] for instance, the purchaser alleged that the mortgagor, who had remained in possession, had threatened to harvest and sell the crops on the land and not to pay the use and occupancy value. Further, it was alleged that the mortgagor was insolvent, so that a judgment against him would be unavailing. Nonetheless, the court refused to appoint a receiver, on the grounds that the position of the purchaser was the same as that of any unsecured creditor. The only basis for appointment is the restraining of waste on the property.[162] In the event that a receiver is appointed, or that the receiver who was appointed during the foreclosure proceedings remains on to pay over the rents to the purchaser, the appointment is subject to collateral attack, as being beyond the jurisdiction of the court.[163] Nor may a writ of attachment be obtained on an action for the rents or for use and occupancy, inasmuch as the liability is a purely statutory one, and does not support such a writ under section 537 of the California Code of Civil Procedure.[164]

Where a tenant of the mortgagor is in possession during the redemption period, the enforcement problems are even more troublesome. The court has established the rule that the tenants, even though they must pay rent to the purchaser, are nonetheless tenants of the mortgagor, inasmuch as he is the one entitled to possession.[165] And even if the mortgagor seeks to interfere with and harass the purchaser in attempting to collect the rents, the courts will not assist. In *First Nat'l Trust and Sav. Bank v. Staley*[166] the purchaser sought to enjoin the mortgagor's interfering with his collecting rents from tenants in the apartment building which he had purchased at foreclosure sale. The court refused to issue the injunction,

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160 First Nat'l Trust and Sav. Bank v. Staley, 219 Cal. 225, 25 P.2d 982 (1933); Boyd v. Benneyan, 204 Cal. 23, 266 Pac. 278 (1928); West v. Conant, 100 Cal. 231, 34 Pac. 705 (1893).

161 100 Cal. 231, 34 Pac. 705 (1893).

162 *Cf.* Mau, Sadler & Co. v. Kearney, 143 Cal. 506, 77 Pac. 411 (1904); Hill v. Taylor, 22 Cal. 191 (1863) (under § 143 of Practice Act of 1850). *But see* West v. Conant, 100 Cal. 231, 34 Pac. 705 (1893).

163 Boyd v. Benneyan, 204 Cal. 23, 266 Pac. 278 (1928). *But see* Tuohy v. Moore, 133 Cal. 516, 65 Pac. 1107 (1901).

164 See Walker v. McCusker, 65 Cal. 360, 4 Pac. 206 (1884).

165 First Nat'l Trust and Sav. Bank v. Staley, 219 Cal. 225, 25 P.2d 982 (1933); Shintaffer v. Bank of Italy, 216 Cal. 243, 13 P.2d 668 (1932); McClintock v. Powley, 210 Cal. 333, 291 Pac. 833 (1930). *But see* Munzinger v. Caffrey, 49 Cal. App. 2d 180, 121 P.2d 13 (1942) (purchaser in effect an assignee of reversion for a year). See also Walker v. McCusker, 71 Cal. 594, 12 Pac. 723 (1887) (during redemption period the purchaser is the owner in equity, subject only to the right of redemption. He has the entire beneficial interest except actual possession); Page v. Rogers, 31 Cal. 293 (1866) (same, dictum).

166 219 Cal. 225, 25 P.2d 982 (1933).

on the grounds that to do so would be the equivalent of appointing a receiver. The right of the purchaser would seem, then, to be a right which has received but little encouragement from the courts.

Further Problems

There remain two problems which have been hinted at by the courts, and which have been alluded to in dictum from time to time, but never decided. The first is the exact nature of the liability of a tenant in possession (other than the mortgagor) claiming under a lease subject to the mortgage. Under the statutory language, he is liable for "the rents *or* the value of the use and occupation (of the land)." Only two cases have dealt at any length with the question of whether the terms of a lease subject to the mortgage are binding on the purchaser, or whether the purchaser may elect to seek the value of use and occupancy in preference to the rents called for in the lease. In *Munkelt v. Kumberg*,[167] the question was adverted to, but then expressly not decided, on the grounds that the tenant had never shown exactly what the annual rentals called for by his lease were. Absent such a showing, the purchaser was entitled to the value of use and occupancy. And in *Munzinger v. Caffrey*[168] it was held that whatever the nature of the liability of the tenant in possession to the purchaser, it is clear that if he pays less than the amount called for in his lease, the mortgagor does not have a right to the difference, whatever liability there is being owed solely to the purchaser. The only indication in the decision as to the feeling of the court on the nature of the liability is its emphasis upon the "or" in the statutory expression. It would seem that the alternative provisions were intended to give the purchaser a right to the full use and occupancy in the event that a lease provided for rents which were clearly inadequate.[169]

A more puzzling, and perhaps more vital problem is that posed by dicta in several cases involving receivers appointed during pendency of the foreclosure action. As pointed out above, the rule, generally speaking, is that a receiver may be appointed during pendency of a foreclosure action to take rents and profits and apply them to the debt, at least where there is a properly drafted rents and profits clause conferring a right of possession on default. And, as has also been pointed out above, the purchaser is not entitled to appointment of a receiver to take rents and profits in the period between the sheriff's sale and execution of the sheriff's deed—the redemption period. But throughout the cases denying the validity of the appointment of a receiver during the redemption period there has been a

[167] 22 Cal. App. 2d 369, 70 P.2d 997 (1937).

[168] 49 Cal. App. 2d 180, 121 P.2d 13 (1942).

[169] *Cf.* People v. Gustafson, 53 Cal. App. 2d 230, 127 P.2d 627 (1942).

recurring statement that the mortgagee may obtain appointment of a receiver to take rents and profits during the redemption period to satisfy a deficiency judgment.

Apparently the first case to consider the point directly, and apparently the only one to do so, was *Mau, Sadler & Co. v. Kearney*,[170] in which it was held that the *purchaser* could not obtain appointment of a receiver during the redemption period on an allegation that he wished to satisfy a deficiency judgment. The court's position was that the only basis for appointment of a receiver during the redemption period was the restraining of waste.

But some years later, in *Boyd v. Benneyan*,[171] the court, in holding void an order appointing a receiver to pay over rents and profits to the purchaser during the redemption period, stated that the only basis under which an order of appointment to extend into the redemption period could be justified would be the satisfaction of a deficiency, on behalf of the mortgagee. This dictum has been reiterated in two subsequent cases, in both of which the statement was unnecessary. In *Reidy v. Young*,[172] it was held that an appointment of a receiver to stay in possession during the redemption period was void, where no deficiency judgment was rendered in the foreclosure action. And again, in *First Nat'l Trust and Sav. Bank v. Staley*, the court, in denying an injunction against interference with the purchaser's right to collect rents and profits, noted that there was no right to appointment of a receiver, since the purchaser had bid the full amount of the debt, and there could not, therefore, be a deficiency judgment.

It is important to recognize that in each of the cases in which this statement is found, it is the rankest of dictum. And yet the potential in these statements is overwhelming. Combining this rule with the rule that appointment of a receiver to take rents and profits is not a deficiency judgment, and not barred by the anti-deficiency legislation,[173] it appears that there is a most potent weapon in the arsenal of the mortgagee for obtaining an additional ounce of flesh in the foreclosure proceedings. And yet there has never been a case directly involving the point. Until such time as the matter is finally settled by a direct holding, one can only speculate as to what the courts will do when required to uphold this dictum. Certain observations seem in order, however. First, it is necessary to distinguish the fiction of the purchase and the reality. Although in legal contemplation the purchaser and the mortgagee are independent

[170] 143 Cal. 506, 77 Pac. 411 (1904).
[171] 204 Cal. 23, 266 Pac. 278 (1928).
[172] 119 Cal. App. 322, 6 P.2d 112 (1931).
[173] Mortgage Guarantee Co. v. Sampsell, 51 Cal. App. 2d 180, 124 P.2d 353 (1942).

of one another, the actual fact is that the purchaser at foreclosure sale is usually the mortgagee. Assuming that this is the case, what benefits accrue to him from the rule permitting appointment of a receiver to apply the rents and profits to a deficiency judgment? Inasmuch as the mortgagee in his capacity as purchaser would be entitled to these same rents and profits, it would appear that the only advantage is that which accrues from appointment of a receiver at any time—there would no longer be the difficulties of enforcement of his right. It would convert the sometimes valueless legal right into a valuable one. On the other hand, if the mortgagee does not wish to purchase the land, it would seem that the potential right to a receiver to collect rents and profits would conflict directly with the right of a purchaser to the same rents and profits. Who would be entitled as between a mortgagee claiming through a receiver in possession to apply rents and profits to his deficiency, and a purchaser claiming them in satisfaction of his statutory claim? It would seem strange that the mortgagee's rights to the rents and profits could be held superior to those of the purchaser under the statute. And if the result is to be that the purchaser has the superior right when he and the mortgagee are not in fact the same person, then it seems difficult to justify giving the mortgagee a right to appointment of a receiver to satisfy a deficiency judgment when he happens to be the purchaser, too. It is suggested, in other words, that the dictum offering the hope that the mortgagee can take rents and profits during the redemption period is no more than a dictum of extremely doubtful propriety.

Right to Crops as Rents and Profits

As indicated at the beginning of this section, determination of the right to crops as rents and profits involves two questions: (1) The right to rents and profits in general, which has just been considered; and (2) the right to crops as rents and profits, which problems will be considered in the following paragraphs.

As between the mortgagee and mortgagor, it is well settled that crops are rents and profits, so that a mortgagee who has a right to rents and profits is entitled to the growing crops in satisfaction of that right. Thus, once the mortgagee gains possession of the land, and becomes entitled to the rents and profits thereof, he may harvest the crops and apply the proceeds to the debt.[174] Were the only rights involved those of the mortgagee and mortgagor, or purchaser and mortgagor, there would be but little difficulty in determining their conflicting claims in the crops. Se-

[174] Cowdery v. London and San Francisco Bank, 139 Cal. 298, 73 Pac. 196 (1903); Montgomery v. Merrill, 65 Cal. 432 (1884).

curity transactions in crops, however, are seldom so simple. Normally there are several persons claiming the crops under various transactions with the land mortgagor. It is as against these claimants that the rights of the land mortgagee become more complex.

The right to rents and profits, as has been seen, is generally dependent upon the mortgagee's gaining possession of the property. There has never, therefore, been any serious attempt by a land mortgagee to claim crops harvested before the actual taking of possession. Thus, where the mortgagor sells or encumbers a crop after execution of the land mortgage, and satisfies his obligation under that contract before the land mortgagee takes possession, there is no substantial question but that the land mortgagee has no claim against either the mortgagor or the claimant under the mortgagor. The difficult questions involve agreements between the land mortgagor and encumbrancers, lessees, or purchasers of a crop which agreements are made before the mortgagee takes possession, but involve a crop growing at the time possession is taken, or a crop to be grown thereafter. Granting that the mortgagor is in a position to dispose of the crops grown up to a certain time, when does the right of the land mortgagee become superior to the right of those who claim the crops under dispositions made by the mortgagor prior to the mortgagee's taking possession?

As a policy matter, any one of several different "cut off" dates could be selected. The right of the land mortgagee could be said to be superior to the rights of those claiming under later dispositions by the mortgagor as of the moment possession is taken. Or it could be said that a disposition made by the mortgagor was effective as to all crops planted before the mortgagee took possession. Or, since it is clearly the law that a future crop may be sold[175] or mortgaged,[176] it could be said that any disposition made by the mortgagor would be effective as against the mortgagee, no matter when the crop was to be planted. The basic conceptual difficulty in analyzing these various possibilities is that the crops are being claimed in different statuses. The land mortgagee claims them as rents and profits. The claimant under the mortgagor claims them as crops. Because of this fact, it is easy to rationalize any policy decision into a conceptual pattern. The important thing to bear in mind, no matter what conceptualizations are employed to justify a result, is that it is the result which is crucial, and fine-spun theories based on the difference between crops as rents and

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[175] Merriman v. Martin, 113 Cal. App. 167, 298 Pac. 95 (1931); Sun Maid Raisin Growers v. Jones, 96 Cal. App. 650, 274 Pac. 557 (1929); Hamilton v. Klinke, 42 Cal. App. 426, 183 Pac. 675 (1919); see Smith v. Baker, 95 Cal. App. 2d 877, 214 P.2d 94 (1950).

[176] First Nat'l Bank v. Brashear, 200 Cal. 389, 253 Pac. 143 (1927); Hall v. Glass, 123 Cal. 500, 56 Pac. 336 (1899); Lemon v. Wolff, 121 Cal. 272, 53 Pac. 801 (1898); Arques v. Wasson, 51 Cal. 620 (1877); see Cohen v. Marshall, 197 Cal. 117, 239 Pac. 1050 (1925).

profits and crops as crops should not be permitted to obscure the effects of a choice of any of these possible results.

The California Position

The California courts are clearly committed to the rule that a disposition of a crop growing on the land at the time posesssion is taken, which disposition was made before the mortgagee took possession, is effective as against the mortgagee. The first case to consider the point held that the claim of the land mortgagee to the crops, as rents and profits, was superior to that of a crop mortgagee claiming under a later instrument.[177] The decision was reached on the basis that the crop mortgagee obtained no greater rights in the crop than that of his mortgagor, who was clearly not entitled as against the land mortgagee, under the rule of *Montgomery v. Merrill*.[178] This remained the law of the state for three years, until in *Simpson v. Ferguson* it was specifically overruled, and the doctrine enunciated which still controls as to a crop growing on the land at the time the mortgagee takes possession. In *Simpson v. Ferguson* the adverse claimants were again a land mortgagee claiming the crops as rents and profits, and a crop mortgagee under a later instrument. The court, noting that section 2955 of the Civil Code provided for the mortgaging of crops as chattels, felt that this was an exclusive means of subjecting them to a lien, which required holding that the land mortgage did not extend to the crops as such. Then, since the lien of the land mortgage on rents and profits was not effective until the mortgagee actually took possession, the court felt that the land mortgagee must be bound by any dispositions of the crops made before the taking of possession. This being the case, the crop mortgagee clearly had the superior claim to the crops. Notice that this does not imply that the mortgagee does not have the right to the rents and profits of the land from the moment of entry. It is simply that he cannot enforce this right by taking the crop, which in effect is to say that the right is a rather hollow one.

This rule has been followed in case after case considering the conflicting interests of the land mortgagee and a crop mortgagee or vendee as to whom the land mortgagee has temporal priority.[179] Until such time as the land mortgagee actually takes possession of the land, he is bound by any disposition of a crop growing on the land, even if the disposition is made after the entry of judgment against the mortgagor.[180] Once the land mort-

[177] Treat v. Dorman, 100 Cal. 623, 35 Pac. 86 (1893).

[178] 65 Cal. 432 (1884).

[179] Cowdery v. London and San Francisco Bank, 139 Cal. 298, 73 Pac. 196 (1903); Scott v. Hotchkiss, 115 Cal. 89, 47 Pac. 45 (1896); First Nat'l Bank v. Andreas, 92 Cal. App. 62, 267 Pac. 937 (1928); First Nat'l Bank v. Garner, 91 Cal. App. 176, 266 Pac. 849 (1928).

[180] Bank of Woodland v. Christie, 6 Cal. Unrep. 545, 62 Pac. 400 (1900).

gagee takes possession, however, a subsequent disposition of the crop, as by sale or encumbrance, is ineffective.[181]

Simpson v. Ferguson and the related cases have made it clear that the land mortgagee is bound by dispositions of crops growing on the land at the time the mortgagee gains possession, but that he is not bound by dispositions made after taking possession. But there has, as yet, been no indication of the result in the situation in which the mortgagor, before the land mortgagee takes possession, purports to encumber or sell a future crop. What, for instance, of the receiver who takes possession of land lying fallow, who plants a crop and harvests it during the pendency of the foreclosure action. Is this crop subject to a crop mortgage or sale agreement covering future crops, executed by the mortgagor before possession was taken? Contrary results can be reached with equal support in the cases. First, it is clear that the disposition of future crops is valid.[182] And, where such a disposition is made, it has been held that an attempt to homestead the property does not destroy the lien of the crop mortgage on future crops,[183] nor does a petition and discharge in insolvency.[184] These decisions would tend to support the claim of the crop mortgagee. On the other hand, it has been held that where a crop mortgagor conveys an estate in the land he owns, the lien of the crop mortgage does not extend to the crop grown by the grantee of that estate.[185] This line of reasoning would seem the most valid under the circumstances described, but must overcome the long supported theory that the mere taking of possession does not expand the mortgagee's interest in the land.[186]

With the authority as diverse as it is, it would seem that the court should be free to select whichever result seemed best suited to the interests of all the parties. In view of the fact that the typical crop mortgage covering future crops contemplates periodic advances, the most desirable result would seem to be that of giving the right to crops actually planted by the mortgagee or receiver to the mortgagee, free from the claim of the crop mortgagee or vendee.

Rights of Purchaser at Foreclosure Sale to Crops

Following the execution sale, the mortgagee is no longer entitled to rents and profits, barring the possibility of the deficiency judgment dis-

[181] Lovensohn v. Ward, 45 Cal. 8 (1872); Nelson v. Bowen, 124 Cal. App. 662, 12 P.2d 1083 (1932).

[182] See notes 175 and 176 *supra*.

[183] Hall v. Glass, 123 Cal. 500, 56 Pac. 336 (1899).

[184] *Ibid.*

[185] First Nat'l Bank v. Brashear, 200 Cal. 389, 253 Pac. 143 (1927). *Compare* Pacific Coast Joint Stock Land Bank v. Jones, 14 Cal.2d 8, 92 P.2d 390 (1939) *with* Downs v. National Bank, 101 Cal. App. 712, 282 Pac. 420 (1929).

[186] Dutton v. Warschauer, 21 Cal. 609 (1863).

cussed above,[187] and the purchaser becomes entitled to them under the statute.[188] The problem of the purchaser in seeking a claim against the crops is somewhat more complicated than that of the mortgagee, due in large part to the rather tenuous nature of the right which the courts have afforded him.

Where the mortgagor remains in possession during the redemption period, the position of the purchaser is especially unfortunate, as regards his rights to crops. Since the tenancy is statutory, and the liability for the rent or value of use and occupation is expressed primarily in money terms, there is little chance to claim the crops against a mortgagor in possession who desires to dispose of them in derogation of the rights of the purchaser to rents. As was the case in *West v. Conant,* the fact that the mortgagor in possession is insolvent, and threatens to sell the crops in their entirety to a third party, will not move the court to give the purchaser relief, despite the fact that this will leave him only the empty remedy of a judgment against one who is unable to satisfy it. Of course, if the mortgagor in possession wishes to cooperate with the purchaser, they may well arrange for payment of the rental value in a share of the crops. And, in at least one case judgment for the value of use and occupation was given in a share of the crops.[189] But both of these possibilities assume that there is no attempt on the part of the mortgagor to defeat the interests of the purchaser.

Generally, it is believed that the purchaser will be subordinated to any disposition made of the crop by the mortgagor in possession.[190] It has even been indicated that dispositions of the crops made by the mortgagor prior to the mortgagee's taking possession during the action in foreclosure will continue to take priority over the claim of the purchaser during the redemption period.[191]

The purchaser's right to crops is, then, extremely doubtful, dependent primarily upon the goodwill of the mortgagor in possession. But where the mortgagor is not personally in possession of the land, holding rather through a tenant, the purchaser has a somewhat stronger position. In *Clarke v. Cobb,* the purchaser and the mortgagor were claiming crops paid over by the tenant in possession. The court, construing the agreement between the mortgagor and the tenant as a lease calling for the payment of rent in kind, held that the purchaser was entitled to an apportioned share of the crops as against the mortgagor. The decision hinged

187 Text at note 170 *supra,* and following.

188 Text at note 155 *supra,* and following.

189 Munkelt v. Kumberg, 22 Cal. App. 2d 369, 70 P.2d 997 (1937).

190 Shintaffer v. Bank of Italy, 216 Cal. 243, 13 P.2d 668 (1932); Clarke v. Cobb, 121 Cal. 595, 54 Pac. 74 (1898).

191 First Nat'l Bank v. Garner, 91 Cal. App. 176, 266 Pac. 849 (1928).

upon two factors. First, the court had to determine whether the interest of the mortgagor in the crop which was divided between himself and the tenant was that of a tenant in common, or that of a lessor receiving rent in kind. Construing the agreement to make the portion of the crop given the mortgagor a mere rental payment, the court next held that the purchaser was entitled to his proportionate share thereof,[192] inasmuch as the crops came to the mortgagor not as crops, but rather, as rents. In short, the case determined the right of the purchaser as against a mortgagor to crops payable as rents.

In *Shintaffer v. Bank of Italy*[193] this position was carried to its logical conclusion. Here the contest was between the purchaser and a crop mortgagee, claiming under an instrument executed by the mortgagor, subjecting his share of the crops raised by a tenant to the lien of the crop mortgagee. In awarding the crop to the purchaser, the court held that the share of the crops given to the mortgagor was merely a rental payment. As such, the purchaser is entitled as against the mortgagor, and, therefore, the crop mortgagee's rights must be subordinated. The court contrasted the situation in which the division of the crop between tenant and mortgagor was a division between tenants in common in the crop. If this were the case, then the crop would have come to the mortgagor as a crop, rather than as rents, and the crop mortgagee would have had the superior right.

The right of the purchaser to crops depends then, either upon the goodwill of the mortgagor if he is personally in possession, or upon the construction of the agreement under which the mortgagor's tenant holds possession. In either event, it is clear that the right is a tenuous one.

Effect of Sheriff's Deed

The final step in the real estate mortgage transaction is the issuance of the sheriff's deed. At this point the land is considered as having been transferred absolutely, as of the date of execution of the mortgage under which foreclosure was had. The rights of the parties as to growing crops following issuance of the deed are simple, and well defined. Immediately upon issuance, the purchaser is entitled to possession of the land, with any crop growing thereon. All rights accruing to third parties from the mortgagor, subsequent to execution of the mortgage, are terminated, following the relation back theory of the deed.[194] The tenant in possession is not entitled to harvest a crop which he has planted prior to expiration of the redemption period, the doctrine of emblements not applying.[195] Nor

[192] See CAL. CODE CIV. PROC. § 707.

[193] 216 Cal. 243, 13 P.2d 668 (1932).

[194] See Penryn Fruit Co. v. Sherman-Worrell Fruit Co., 142 Cal. 643, 76 Pac. 484 (1904) (the crop mortgage executed before termination of estate in the land not a constructive severance of the crop).

[195] Sullivan v. Superior Court, 185 Cal. 133, 195 Pac. 1061 (1921).

is there any apportionment of rents and profits on the transfer.[196] The only possible source of difficulties is suggested by *Corcoran v. Doll*,[197] in which the court, although denying the right of a tenant in possession to delay the purchaser's taking possession, which delay was allegedly for the purpose of enabling the tenant to harvest a growing crop, noted that the tenant might have a right to compensation for his services in caring for the crops during the redemption period. No subsequent case has discussed this point.

Occasional attempts have been made to defeat this absolute passage of title, on the grounds of compelling equities in favor of the tenant in possession. Usually these cases involve leases purporting to be for a long term, in reliance on which the lessee entered and made extensive improvements, or a substantial investment. The courts have been generally unsympathetic,[198] although in one case, where it was found that the mortgagee himself had requested the execution of such a lease, he was held bound by it.[199] And, of course, if the lease were executed prior to the mortgage, then the mortgage would be subject to the lease, so that possession could not be taken until expiration of the leasehold term.

The same general rules pertain to a sale under a power. The only significant difference between such a sale, and a sale under foreclosure, is that there is no redemption period following a sale under a power. The conveyance becomes absolute immediately upon its being made. In such a situation, of course, the problems of the rights of the purchaser are not encountered.[200]

Conclusion

In general, the conflicting rights of the land mortgagee, land mortgagor, claimants under the mortgagor, and the purchaser at foreclosure sale have been resolved in a fashion which has led to promotion of those interests which should be kept uppermost. Wherever a value judgment must be drawn, it is well to draw it in favor of that result which tends to promote the use of land for agricultural purposes, and to encourage the financing and production of crops. Determination of which of several alternative solutions to a given problem will best attain this end is a difficult one. It cannot be said that the California courts have erred significantly in their selections.

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196 Corcoran v. Doll, 35 Cal. 476 (1868). And see cases cited in note 200 *infra*.

197 35 Cal. 476 (1868).

198 Mercantile Trust Co. v. Sunset Road Oil Co., 176 Cal. 461, 168 Pac. 1037 (1917).

199 Calidono Hotel Co. v. Bank of America, 31 Cal. App. 2d 295, 87 P.2d 923 (1939).

200 Farris v. Pacific States Auxiliary Corp., 4 Cal.2d 103, 48 P.2d 11 (1935); Fahrenbaker v. E. Clemens Horst Co., 209 Cal. 7, 284 Pac. 905 (1930); Penryn Fruit Co. v. Sherman-Worrell Fruit Co., 142 Cal. 643, 76 Pac. 484 (1904); Phillips v. Pacific Land and Cattle Co., 116 Cal. App. 290, 2 P.2d 566 (1931); see Brown v. Copp, 105 Cal. App. 2d 1, 232 P.2d 868 (1951); *cf.* Dugand v. Magnus, 107 Cal. App. 243, 290 Pac. 309 (1930).